

Message Text

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E.O. 11652: N/A
TAGS: BEXP CS
SUBJECT: PROHIBITION ON "BEARER SHARE" COMPANIES DOING BUSINESS
WITH GOCR

SUMMARY: A RECENT COSTA RICAN LAW PROHIBITS COMPANIES WITH BEARER SHARES FROM SELLING GOODS OR SERVICES TO THE GOCR OR AUTONOMOUS GOVERNMENT INSTITUTIONS. IN DRAFTING IMPLEMENTING REGULATIONS FOR THIS LAW THE GOCR CONTROLLER GENERAL SEEKS INFORMATION ON U.S. LAWS AND REGULATIONS PERTAINING TO ACCOUNTABILITY OF SHARES IN U.S. COMPANIES. END SUMMARY.

1. A SECTION OF THE COSTA RICAN FINANCIAL ADMINISTRATION LAW WHICH ENTERED INTO EFFECT LAST MONTH PROHIBITS FROM DOING BUSINESS WITH THE GOCR OR ITS AUTONOMOUS AGENCIES COMPANIES WHOSE CAPITAL IS REPRESENTED BY "BEARER SHARES" (IN SPANISH ACCIONES AL PORTADOR) OR COMPANIES WHICH HAVE ISSUED INSTRUMENTS OF PARTICIPATION IN THE ENTERPRISE TO THE BEARER, AS WELL AS COMPANIES WHOSE SHARES MAY BELONG TO A COMPANY WITH BEARER SHARES OR INSTRUMENTS OF PARTICIPATION TO THE BEARER.

2. THE OSTENSIBLE PURPOSE OF THIS PROVISION IS TO PREVENT GOVERNMENT OFFICIALS FROM PARTICIPATING FINANCIALLY IN COMPANIES WHICH SELL OR PROVIDE SERVICES TO THE GOVERNMENT.

3. COSTA RICAN BEARER SHARE COMPANIES ARE NOT REQUIRED TO
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PAGE 02 SAN JO 00264 192030Z

KEEP A RECORD OF WHO HOLDS THEIR BEARER SHARES AND SUCH SHARES MAY CHANGE HANDS WITHOUT THE KNOWLEDGE OF COMPANY OFFICIALS. FOR THE PURPOSE OF PAYMENT OF DIVIDENDS AND VOTING RIGHTS THE INDIVIDUAL WHO HAS PHYSICAL POSSESSION OF THE SHARES AT THE TIME OF DIVIDEND PAYMENT OR THE COMPANY'S ANNUAL MEETING IS DEEMED THE OWNER.

4. THE CONTROLLER GENERAL OF THE REPUBLIC IS TO ISSUE IMPLEMENTING REGULATIONS FOR THIS LAW, BUT HAS NOT YET DONE SO. ONE OF THE PRINCIPAL AND CRUCIAL POINTS FOR THE CONTROLLER GENERAL IS HOW THE PROVISION WITH REGARD TO BEARER SHARES IS TO BE INTERPRETED FOR NON-COSTA RICAN COMPANIES, WHOSE COUNTRY OF ORIGIN MAY HAVE A SYSTEM OF BEARER SHARES WHICH IS NOT THE SAME AS THAT OF COSTA RICA. ACCORDINGLY THE CONTROLLER GENERAL IS ANXIOUS TO SECURE INFORMATION ON LAWS AND REGULATIONS OF THE U.S. AND OTHER COUNTRIES WITH RESPECT TO COMPANY ORGANIZATION AND BEARER SHARES. HE IS PARTICULARLY INTERESTED IN THE QUESTION OF THE ACCOUNTABILITY FOR SHARES; THAT IS WHETHER OR NOT THE COMPANY IS REQUIRED TO MAINTAIN AND/OR FILE WITH A GOVERNMENT AGENCY A CURRENT LISTING OF ITS SHAREHOLDERS.

5. THE EMBASSY WOULD APPRECIATE INFORMATION ON ANY FEDERAL LAWS AND REGULATIONS (SUCH AS S.E.C.) WITH CITATION, WHICH WOULD REQUIRE, OR WOULD HAVE THE EFFECT OF REQUIRING, U.S. COMPANIES TO MAINTAIN A RECORD OF WHO THEIR SHAREHOLDERS ARE.

6. IN THE CASE OF COMPANIES WHOSE SHARES ARE NOT SOLD INTERSTATE, AND MAY BE SUBJECT ONLY TO THE LAWS OF THE STATE OF INCORPORATION, WOULD IT BE FEASIBLE FOR THE APPROPRIATE OFFICER OF THE STATE GOVERNMENT CONCERNED TO PROVIDE TO COMPANIES THAT MAY REQUIRE IT, A BRIEF STATEMENT OF THE STATE LAW OR REGULATION APPLICABLE TO MAINTAINING RECORDS OF SHAREHOLDERS?

7. FYI: COSTA RICAN SOCIAL SECURITY INSTITUTE, WHICH
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PAGE 03 SAN JO 00264 192030Z

FREQUENTLY PURCHASES GOODS AND SERVICES FROM U.S. COMPANIES HAS ALSO ASKED EMBASSY FOR INFORMATION ON U.S. PRACTICES RE BEARER SHARES. IN THE ABSENCE OF IMPLEMENTING REGULATIONS BY THE CONTROLLER GENERAL, THE INSTITUTE IS DELAYING THE AWARD OF A BID IN WHICH U.S. COMPANIES ARE INVOLVED, BECAUSE OF UNCERTAINTY AS TO WHETHER U.S. FIRMS WOULD BE INELIGIBLE UNDER THE BEARER SHARE PROVISIONS. END FYI.

8. TEXT OF FINANCIAL LAW AND PERTINENT SECTION OF COSTA RICAN COMMERCIAL CODE RELATING TO BEARER SHARES AIRPOUCHED.
TO BOVA, ARA/CEN.
TODMAN

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